

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 3, 2006

IN RE:)	
)	
PETITION OF KING'S CHAPEL CAPACITY, LLC)	DOCKET NO.
FOR A CERTIFICATE OF CONVENIENCE AND)	04-00335
NECESSITY TO SERVE AN AREA IN WILLIAMSON)	
COUNTY, TENNESSEE KNOWN AS ASHBY)	
COMMUNITY)	

ORDER APPROVING PETITION FOR
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

This matter came before Chairman Ron Jones, Director Deborah Taylor Tate and Director Pat Miller of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a Hearing held on September 7, 2005 to consider the *Petition* of King's Chapel Capacity, LLC ("King's Chapel" or the "Company") for a certificate of public convenience and necessity ("CCN") to provide wastewater service to the Ashby Communities Development in Williamson County, Tennessee.

Background

On October 5, 2004, King's Chapel filed a *Petition* requesting a CCN to provide wastewater service to the Ashby Communities Development in Williamson County, Tennessee. On October 11, 2004, Tennessee Wastewater Systems ("TWS") filed the *Petition to Intervene of Tennessee Wastewater Systems, Inc.* ("*Petition to Intervene*"). In the *Petition to Intervene*, TWS argued that King's Chapel should be denied a CCN to serve the proposed area because TWS already possessed a CCN to serve the area. On November 17, 2004, King's Chapel filed the

King's Chapel Capacity, LLC's Response to Tennessee Wastewater Systems, Inc 's Petition to Intervene in opposition to the *Petition to Intervene* filed by TWS. King's Chapel argued that the CCN possessed by TWS was non-exclusive and that TWS currently lacked the ability to serve the area because it had neither built its own plant nor did it own a plant capable of serving the subdivision at issue.

On December 2, 2004, TWS filed a *Motion to Hold Proceedings in Abeyance* arguing that the legal issues before the Authority were inextricably intertwined with issues currently before the Williamson County, Tennessee Chancery Court. As such, TWS urged the Authority to hold the proceedings in abeyance until the Chancery Court action was resolved. King's Chapel filed the *Response of King's Chapel Capacity, LLC to Motion to Hold Proceedings in Abeyance* ("*Response of King's Chapel*") on December 9, 2004 opposing the request to hold the proceedings in this docket in abeyance. In the *Response of King's Chapel*, King's Chapel maintained that the evidence offered by TWS in support of its *Motion to Hold Proceedings in Abeyance* was an attempt to shift the focus of the proceeding and to confuse the issue before the Authority.

On December 17, 2004, the Hearing Officer issued an *Order Granting Motion to Hold Proceedings in Abeyance*. The Hearing Officer granted the *Motion to Hold Proceedings in Abeyance* insofar as she required that the proceedings be held in abeyance pending: (1) the award or refusal to award King's Chapel a state operating permit ("SOP") by the Tennessee Department of Environment and Conservation ("TDEC") and (2) the dismissal of Count III of the Complaint before the Williamson County, Tennessee Chancery Court or the determination of the ownership of the sewer system by the court.

On December 20, 2004, King's Chapel filed a *Motion to Reconsider or in the Alternative Motion for Intermediate Relief* ("*Motion to Reconsider*") requesting that the Authority reconsider the Hearing Officer's decision to hold the proceedings in abeyance or, in the alternative, that the TRA approve a third-party wastewater provider to complete construction of the system and to allow the third-party provider to provide wastewater service to the community while this proceeding was held in abeyance. On December 22, 2004, TWS responded in opposition to King's Chapel's *Motion to Reconsider*. On December 30, 2004, the Hearing Officer issued an order denying King's Chapel's *Motion to Reconsider*.

On January 10, 2005, King's Chapel filed a *Petition of Appeal from Order of Abeyance of the Hearing Officer* ("*Petition of Appeal*") requesting that the panel review the Hearing Officer's decision to deny the *Motion to Reconsider*. On January 19, 2005, TWS responded in opposition to King's Chapel's *Petition of Appeal*. During deliberations on February 3, 2005, a majority of the panel voted to uphold the Hearing Officer's *Order Granting Motion to Hold Proceedings in Abeyance*.¹

On May 24, 2005, King's Chapel filed a *Notice of Order Entered in Collateral Proceeding and Motion to Set Aside Order Granting Motion to Hold Proceedings in Abeyance and for an Expedited Hearing* requesting that the Authority set aside the Hearing Officer's *Order Granting Motion to Hold Proceedings in Abeyance* because the Williamson County, Tennessee Chancery Court entered an order on May 23, 2005 dismissing Count III and Count IV of the Complaint regarding the wastewater system at issue here. On May 31, 2005, TWS filed the *Response of Tennessee Wastewater Systems to Motion of King's Chapel to Re-Convene Proceedings* arguing that proceedings should continue to be held in abeyance until TDEC makes

¹ See *Order Affirming Hearing Officer's Order Issued December 17, 2004 and Holding Proceedings In Abeyance* (September 2, 2005)

a final determination regarding the SOP for the wastewater system located at the Ashby Communities Development.

At a Status Conference held on July 21, 2005, the Hearing Officer stated that the proceedings were still held in abeyance pending TDEC's award or refusal to award King's Chapel a SOP. On July 25, 2005, TWS filed a *Notice of Settlement and Withdrawal of Objections* informing the Authority that the parties had reached a settlement and withdrawing its objection and opposition to the *Petition* filed by King's Chapel. Pursuant to the settlement agreement, TWS no longer objected to the application filed by King's Chapel as long as King's Chapel does not seek "a revision or change of the geographic area and number of customers to be served" as set forth in the initial application.² Also, on July 25, 2005, King's Chapel filed a copy of the SOP it received from TDEC to provide services to the Ashby Communities Development. In Docket No. 05-00204, TWS filed the *Petition of On-Site Systems* on July 25, 2005 requesting an amendment to the CCN it received from the Authority in Docket No. 97-01393 in order to eliminate duplication of the service area requested by King's Chapel in this docket.³

On August 17, 2005, King's Chapel filed the *Petitioner's Renewed Motion for Expedited Hearing and Special Conference*. King's Chapel requested that the Authority conduct a special conference in order to avoid unnecessary delay and expense to King's Chapel and the property owners in the Ashby Communities Development.⁴ Subsequently, TWS filed a *Notice of Withdrawal of Tennessee Wastewater Systems, Inc.* ("*Notice of Withdrawal*") stating that TWS

² *Notice of Settlement and Withdrawal of Objections* (July 25, 2005)

³ TWS sent a letter, along with a copy of the *Settlement and Mutual Release Agreement*, to the Tennessee Department of Environment and Conservation requesting that TWS's State Operating Permit be transferred to King's Chapel. The letter sent to the Tennessee Department of Environment and Conservation also included a signed acceptance from King's Chapel of the transfer of the State Operating Permit.

⁴ On August 17, 2005, TWS filed a letter with the TRA stating that it has no objection to King's Chapel's request for an expedited hearing and special conference.

sought to withdraw from this docket at the request of King's Chapel. On August 25, 2005, the Hearing Officer issued an order granting the *Notice of Withdrawal* filed by TWS.

The Petition

King's Chapel filed its *Petition* on October 5, 2004 seeking a CCN to provide wastewater service to the Ashby Communities Development in Williamson County, Tennessee. According to the *Petition*, King's Chapel possesses the managerial, technical and financial ability to provide wastewater services to the Ashby Communities Development. King's Chapel attached several documents to its *Petition* in support of its request for the CCN. The Company attached a letter from the Milcrofton Utility District stating the Milcrofton Utility District does not have the authority to provide wastewater service within its boundaries. Additionally, King's Chapel attached excerpts from the Williamson County, Tennessee comprehensive plan illustrating that Williamson County does not anticipate providing wastewater service to the Ashby Communities Development. The Company also provided the Authority with a letter from the developer expressing its desire that King's Chapel provide wastewater service to the Ashby Communities Development.

Additionally, King's Chapel filed with the *Petition* a document outlining the costs associated with operation and maintenance of various types of wastewater systems, a copy of the Company's Rules and Regulations,⁵ a copy of its Sewer Subscription Contract, a billing summary noting that a \$41.42 rate will apply to the Ashby Communities Development and a service area map showing the area in which King's Chapel seeks to provide wastewater service.

The September 7, 2005 Hearing

Pursuant to Tenn. Code Ann. § 65-4-201(a) (2004), public notice of the Hearing in this matter was issued by the Hearing Officer on August 26, 2005. At the Hearing held on

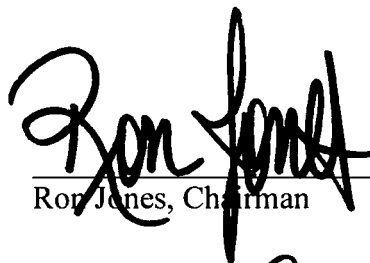
⁵ King's Chapel will charge a ten dollar (\$10) disconnection fee

September 7, 2005, Mr. John Powell, co-owner of King's Chapel, and Mr. Hal Novak, utility consultant for King's Chapel, participated, presented testimony and were subject to examination by the panel. At the Hearing, the panel noted that the Company had changed the tariff filed with the *Petition* to include a function which will dictate the manner in which King's Chapel will recover from customers the costs associated with the bond required by Williamson County, Tennessee.

Based upon the evidentiary and administrative record as a whole and relying on the legal criteria set forth in Tenn. Code Ann. § 65-4-201(a)(2004) the panel voted unanimously to approve the *Petition*. The panel ordered that the Company list the bonding requirement for Williamson County, Tennessee as a separate line item on customers' bills.

IT IS THEREFORE ORDERED THAT:

1. The *Petition* filed by King's Chapel for a CCN to provide wastewater service to the Ashby Communities in Williamson County, Tennessee is granted.
2. King's Chapel shall list the bonding requirement of Williamson County, Tennessee as a separate line item on customers' bills.



Ron Jones, Chairman



Deborah Taylor Tate, Director



Pat Miller, Director